IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2526 OF 2004

Chowgule & Co.)
a Company registered under)
the Companies Act, having its)
Office at Chowgule House,)
Mormugoa Harbour,)
Goa - 403 802.) .... Petitioner.

V/s

1. Chowgule Employees Union)
P.O. Box No.90 Vasco De Gama,)
Goa - 403 802)
)
2. The Presiding Officer,)
Central Government Industrial)
Tribunal No.1, having his Office)
at 1st Floor, Shrama Raksha)
Bhavan, Shiva Shrishti Road, Off.)
Eastern Express Highway, Sion,)
Mumbai - 400 022.) .....Respondents.

Mr. P.K. Rele, Senior Advocate with Mr. Rajesh P. Rele, Mr. Vinod Tayade i/b Mr. Piyush Shah for the Petititioner.

Mr. V.A. Pai for Respondent No.1.

CORAM: V.M. KANADE, J.
DATE : 15TH MARCH, 2007

ORAL JUDGMENT:

1. By this Petition, the Petitioner is seeking a writ of certiorari or an order or direction in the nature of certiorari

for quashing and setting aside the impugned award dated 29/03/2004 passed by the Central Government Industrial Tribunal.

2. Brief facts giving rise to the present Petition are as under:-

FACTS:

3. The Petitioner is a Company registered under the Companies Act, 1956 having its Head Office at Goa. Respondent No.1 is a Trade Union registered under the Trade Unions Act 1926. One Mr. S.S. Naik was employed as an Electrician by the Petitioner since 29/05/1966. The said Mr. Naik was working as a General Secretary of the Trade Union since 1973 till the time he was discharged in October 1995.

4. On 30/10/1995, the Petitioner - Company discharged Mr. S.S. Naik as it felt it was not in the larger interest of the Company and all its workers to continue his services as it

could not repose any confidence in him. In a detailed order of discharge which was issued by the Company, it was mentioned that due to instigation of Mr. Naik, the workers of the Company had resorted to an illegal and unjustified strike with effect from 17/10/1995. It was mentioned in the letter of discharge that the strike which was called by the Union at the behest of Mr. Naik was merely a camouflage and actually it had been resorted to with an ulterior motive. Further, various instances were given in the letter wherein Mr. Naik, while acting as a General Secretary of the Union, according to the Company, showed that he had scant regard to the settlement signed by the Union and he had resorted to breaches of the settlements even after the settlements were signed. Thereafter, the reference was made by the Central Government under clause (d) of sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 for adjudicating and giving an award in respect of an industrial dispute between the Petitioner - Company and Mr. S.S. Naik who was represented by Respondent No.1. The terms of the reference were to inquire into the action of the Managing Director in discharging the said Mr. Naik from services of the

Company as an Electrician and also as a General Secretary of the recognized Union and whether this act was just, valid and legal and, if not, what were the benefits to which the workman was entitled to.

5. The Union in its statement of claim had stated that the workman was a leader of the Union and that he had successfully negotiated and signed six settlements. The workmen of Bimbol Mines of EMCO, Goa Pvt. Ltd operated by M/s. Chowgule & Co. Ltd wanted to accept the said workman Mr. S.S. Naik as their leader. In essence, the Union contended in the statement of claim that the workman Mr. S.S. Naik was discharged not on account of any misconduct in discharging of his duties as an Electrician but was removed because he had successfully represented the Union. A conciliation notice was served on the Company. However, the Company did not participate and, eventually, on the failure of conciliation, the matter was referred to the Tribunal.

6. The Company filed its Written Statement and justified

the discharge of the said workman on the ground that the workman had taken part in 9 strikes and he was the chief instigator who was responsible for all these strikes. Apart from that, it was the case of the Company in its Written Statement that it was entitled to discharge the workman for various reasons which were given in its letter dated 30/10/1995 which itself indicated that there was a loss of confidence on the part of the Management against this workman and therefore he was discharged.

7. The workman in support of his case examined himself and closed his case. The Company, on the other hand, examined Mr. D.P. Sinha, General Manager (Administration) and closed its case. The Tribunal, after examining the evidence on record, came to the conclusion that a letter dated 30/10/1995 discharging the workman was bad-in-law and, therefore, directed that the workman should be reinstated in service from 02/11/1995 and that he was entitled to get arrears of back-wages from 02/11/1995 till the date he attended the age of superannuation in the year 1999 and that he should be deemed to be in continuous

service.

SUBMISSIONS:

8. The learned Senior Counsel Mr. Rele submitted that there was sufficient material on record which indicated that the Company had no other option but to discharge the workman since it felt that his continuance in the Company was against the interest of the Company as well as its workers and, therefore, the Company was justified in issuing the order of discharge. The learned Senior Counsel submitted that apart from the material which was on record, the subsequent events also clearly show that on account of discharge of this workman, there was no further problem faced by the Company and that there

was no unrest among other workers and the Company, therefore, did not incur any further losses. He submitted that the Tribunal had erred in not permitting the Company to bring on record subsequent events. He invited my attention, thereafter, to the impugned order which was passed by the

Tribunal and pointed out that the Tribunal had erred in holding that since the strikes ended in settlement, the conduct of the workman merged in the said settlement and, therefore, it was not possible to hold that the strikes were illegal in the collateral proceedings. He submitted that the Tribunal had proceeded to examine the material on record on the wrong assumption and that the fact about the conduct of the workman during these illegal strikes was relevant and had not been taken into consideration by the Tribunal by giving the aforesaid finding. The learned Senior Counsel submitted that the Tribunal had erred in coming to the conclusion that there was no direct evidence to show that the workman had instigated the last strike. He invited my attention to the evidence of Mr. D.P. Sinha who was the General Manager (Administration) of the Company. He submitted that this witness had stated in his evidence that in 1973, an illegal strike was resorted to force the Company to withdraw the charge-sheet against various workers and that, during this strike, a Car of the Manager was burnt by the workman Mr. S.S. Naik. However, he was let off by the Chief Secretary of the Goa Government and he was directed to

give a bond of good conduct and, in the said offence, Mr. S.S. Naik was convicted by the Additional Sessions Court and was sentenced to undergo imprisonment for a period of one month and that the Revision Application which was filed in the High Court was also dismissed by the order dated 01/09/1988. The learned Senior Counsel submitted that this fact was not controverted by the workman and there was no cross-examination on this point. He submitted that apart from this conviction, the witness had stated in his evidence that the Company had faced 9 strikes since 1973 and all of which were violent and were started without giving notice as required under section 22 of the Industrial Disputes Act. The witness in his evidence had, according to the learned Senior Counsel, cited various instances of the manner in which Mr. S.S. Naik had conducted himself and that he was alone responsible for the strikes and, as a result of these strikes, the Company had suffered a loss to the extent of Rs 40 crores. The learned Senior Counsel Mr. Rele then pointed out that this witness was not cross-examined on various statements which he had made in his evidence and he submitted that, practically, there was no cross-examination

and the evidence of this witness was practically uncontroverted. He further submitted that the Tribunal also did not take into consideration before awarding entire back-wages, whether the workman was gainfully employed or not during this period and, without making any inquiry on this aspect, had directed that he should be reinstated with full back-wages.

9. In support of the said submissions the learned Senior Counsel Mr. Rele relied upon the judgment of the Supreme Court in the case of Tata Engineering and Locomotive Company Ltd. Vs. Prasad (S.C.) and another, reported in **1969 II LLJ 799.** He submitted that the facts of the present case and the case before the Supreme Court were identical and the Supreme Court had, in the said case, upheld the order of discharge which was passed against the said workman. He submitted that in the said case also there was material to show that the workman in the said case was charged before the Criminal Court for assaulting one Mr. Kurup. He submitted that, in the said case also, the Supreme Court gave finding that the Management was aware of the material

which was on record when the order of discharge was passed. He also relied upon the judgment of the Supreme Court in the case of Allahabad Jal Sansthan Vs. Daya Shankar Rai and another, reported in **2005-II-LLJ 847** wherein the Supreme Court held that the workman was not entitled to get full back-wages when he had neither pleaded nor had given evidence to show that he remained unemployed from the date of his termination of his service. He also relied upon the judgment of the Supreme Court in the case of Binjolkar M.L. Vs. State of Maharashtra, reported in **2005-III-LLJ 524** wherein, again, the Supreme Court held that the High Court was justified in awarding 50% of back-wages. He then relied upon the judgment of the Supreme Court in the case of Superintendent of Post Offices and others Vs. R. Valasina Babu, reported in **2007 (112) FLR 914** wherein the Supreme Court held that the Central Administrative Tribunal and the High Court were not correct in not taking into consideration the subsequent events and since the subsequent events were not taken into consideration, the order of the High Court and the CAT were set aside. He also relied upon the judgment of the Supreme Court in the case of Mukand Ltd.

Vs. Mukand Staff and Officers' Association, reported in **2004-II-LLJ 327.** He submitted that in this case also the Supreme Court had taken into consideration subsequent events in respect of the financial position of the Company and the financial burden which would be cast on the Company as a result of an award passed by the Tribunal and, accordingly, the matter was remanded back to the Tribunal to consider the financial burden.

10. Mr. Pai, the learned Counsel appearing on behalf of Respondent No.1, on the other hand, submitted that the workman was victimized for and on account of Trade Union activities. He submitted that the material on record indicated that the Company did not accept any of the demands of the workers at any time and, therefore, the workmen had no option but to go on strike and, ultimately, all these strikes ended into settlement which was executed between the Union and the Company and no action was taken against the workmen by the Company. He submitted that the workman Mr. S.S. Naik was victimized because he had acted on behalf of the Union for benefit of the workmen

and, therefore, he was singled out and removed. He submitted that no inquiry was held against the said workman and that, even in the letter of discharge, no allegation was made about his conduct as a workman and that the Company never had any grievance against the workman for his work as an electrician and the only instance which was cited in the statement of discharge was his activity as a trade union leader. He submitted that it could not be said that the workman alone was responsible for the activities of the Union since the decisions were taken democratically in the Union by the members of the Union and, therefore, the very fact that this workman was singled out, smacked of malafide on the part of the Management. He submitted that the Company had taken this decision and it was a colourable exercise of power and, therefore, the order of Tribunal was liable to be confirmed. He submitted that so far as the conviction of the workman was concerned, the said incident had taken place almost 22 years before he was discharged. He submitted that the incident in question had taken place in 1973 and, thereafter, he continued to work in the Company and neither departmental proceedings were initiated nor any

action was taken against the workman for the said act. He submitted that this incident was not reflected even in the letter of discharge which was issued by the Company. He submitted that, therefore, this incident should not be taken into consideration for the purpose of justifying the order of discharge.

11. Mr. Pai, the learned Counsel appearing on behalf of Respondent No.1 tried to distinguish the judgments on which reliance was placed by the learned Counsel for the Petitioner and submitted that the facts of the case in the case of Tata Engineering and Locomotive Company, Ltd. (supra) were entirely different and, therefore, ratio of the said judgment would not apply to the facts of the present case. He also submitted that in the case of Superintendent of Post Offices (supra), the subsequent events were relevant because, after the departmental inquiry was held, the Caste Scrutiny Committee had set aside the Caste Certificate which was issued in favour of the respondent and, therefore, the said subsequent event was very relevant. He submitted that, therefore, the facts of the present case being different, ratio

of the said judgments was not applicable. He also submitted that in the case of Mukand Ltd. (supra) also, the question which was before the Supreme Court was regarding loss which was suffered by the Company to the tune of Rs. 210 crores in the financial year 2002-03 which was reduced to Rs 157 crores and, thereafter, in the year 2003-04 the loss had accumulated to an amount of Rs 269 crores and that the Company had become Potentially Sick Industrial Company. He submitted that in the light of the financial burden which was cast on the Company as a result of the above order, the Supreme Court felt that it was necessary to take into consideration the subsequent events. He submitted that, again, the facts of the present case are entirely different as, in the present case, even according to the Company, the Company had earned substantial profits and there were no strikes after the workman was removed from service. He also distinguished other judgments in the case of Binjolkar M.L. (supra) and other judgments regarding payment of back-wages. He relied upon the judgments in the cases of Laxmi Devi Sugar Mills Ltd. Vs. Nand Kishore Singh reported in **1956-II-LLJ 439 SC**, D.K. Yadav Vs. J.M.A. Industries Ltd

reported in **1993-II-CLR 116 SC**, Wheels India Ltd. Vs. State of U.P. & Ors reported in **2005-III-CLR 243 H.C.ALL**. He also relied upon the judgment in the case of Delhi Press Vs. R.N. Mehrotra & Ors reported in **1999-I-LLJ 1156 H.C. Delhi.** He further submitted that the standing order did not provide for any termination simpliciter and, therefore, ratio of the Judgments on which the reliance was placed by the Counsel for the Petitioner was not applicable as, in the present case, according to him, the standing order did not provide any termination or discharge without making an inquiry.

FINDINGS & CONCLUSION:

12. I have given my anxious consideration to the submissions made by the learned Counsel for the Petitioner and the learned Counsel for Respondent No.1. In my view, the facts are quite undisputed. It is evident from the facts that witness of the Company was practically not cross-examined and it is a matter of record that there were 9 strikes which ended, finally, in settlement except one and that the Company accepted all demands of workers and

did not take any action against its workers. In many cases, charge-sheets which were issued against the workmen were withdrawn in view of the settlement which was arrived at between the parties. It is also an admitted position that the workman Mr. S.S. Naik was working since 1966 till he was discharged on 30/10/1995 with effect from 02/11/1995 and that, during this period, at no point of time, he had come to the adverse notice of the Management in respect of his work as an electrician and that since 1973 he was working as a member of the Trade Union. It is also not disputed that most of the strikes were violent and, finally, they ended into settlement being reached between the parties. It is also not seriously disputed by the Union that the Company had suffered losses over a period of time.

13. The short question which falls for consideration before this Court is : whether any case is made out by the Petitioner - Company for interfering with the order which is passed by the Tribunal and, secondly, whether the Company had acted malafide or whether the order of discharge was merely a colourable exercise of power by the Company to remove the

workman who was the member of the Trade Union and, lastly, whether the workman is entitled to back-wages from the date of his discharge till the date he reached the age of superannuation in 1999?

14. A perusal of the letter of discharge clearly indicates that what has been alleged against the workman is that he alone was responsible for strikes which had taken place and the entire responsibility of whatever happened during strikes and thereafter was foisted on this workman.

15. Further, if the evidence which has been adduced by the Company is taken into consideration, it can be seen that it had examined one of its managerial staff and no one else. If the Company had material on record to show that this workman himself was responsible for the purpose of acts of calling illegal strikes and or intimidating the workmen for following his dictates, it was imperative for the Company to have examined atleast one workman to show that he was intimidated or to bring any other material on record to substantiate its allegation which was principally made

through one of its own managerial staff. In the absence of any other material, it boiled down to word against word between the Company and the workman. In my view, therefore, the Petitioner - Company had miserably failed to bring on record that the workman alone was responsible for various acts which were alleged to have been committed by the other workmen. It is also not established that the decisions which were taken by the Trade Union and its Managing Committee were influenced by the workman who was only a General Secretary. In the absence of such material, it would be difficult to say that the workman alone was responsible for the various acts which were alleged against him in the letter of discharge when the decisions were taken democratically by the Trade Union through its Executive Committee and, as a result, the workmen had resorted to various strikes. In my view, if the letter of discharge is read in its proper perspective and even if it is accepted in toto, it indicates the frame of mind of the Company and that it indicated that the Company had taken a conscious decision to remove the present workman from the Company without holding any inquiry against the alleged

charges which have been leveled against him in the letter of discharge. This indicates that the Company was ready to face legal consequences which would arise including the payment of entire back-wages to the workman.

16. I have perused the order passed by the Tribunal. In my view, there is no infirmity in the finding which is recorded by the Tribunal or in the assessment of the material by the Tribunal.

17. Therefore, it is not possible to accept the submission made by Mr. Rele, the learned Senior Counsel appearing on behalf of the Petitioner that the Company had no option but to remove Mr. S.S. Naik in the interest of the Company. The subsequent events in the present case, in my view, would not be of any assistance to the Petitioner - Company since the fact that after removal of the workman, there were no strikes and that the Company worked in a peaceful manner is a question which is essentially hypothetical in nature. It cannot be said by any stretch of imagination that merely because after the discharge of the workman, there were no

strikes and, therefore, this justified the action of removing the workman. In the facts and circumstances of the case, in my view, the subsequent events are not relevant and, therefore, the Tribunal was justified in not taking into consideration the subsequent events on record since, in the instant case, the question which really was required to be decided was : whether the action of the Company was malafide or not or was a colourbale exercise of power? It is true that the Company may or can issue an order of termination in cases of loss of confidence if the material which is on record is sufficient to justify such course of action. The normal rule, otherwise, is that the workman is entitled to defend himself and that is one of the important touchstones of the principles of natural justice and that one cannot condemn a person without affording him any opportunity of being heard. In exceptional cases, it may be possible to argue and say that a simpliciter order of termination on account of loss of confidence may be justifiable. The facts of the present case do not disclose that such material existed for taking extreme action of discharging an employee who had diligently worked as an

electrician from 1966 till the date he was shown the door by the Management in October, 1995. If the Company is permitted to resort to such method under the guise of loss of confidence then, in that case, it would be an weapon in the hand of the Management to pick and choose the persons who were working in the Trade Union which is constituted under the statute and would give rise to the policy of hire and fire which had been deprecated time and again by this Court and the Supreme Court.

18. The learned Sr. Counsel Shree Rele has placed reliance on the judgment of Tata Engineering and Locomotive Company Ltd (supra). In my view, the facts of the said case are entirely different and, therefore, the ratio of the said judgment would not apply to the facts of the present case. In the said case one Dubey was working with another group which, admittedly, was not having good relations with the Company. There was sufficient material on record which was examined by the Supreme Court and after examining that record the Apex Court held that the action of the Management was bonafide and not malafide. In the present

case, the workman had an unblemished career from 1966 to 1995 as an electrician. No charges were leveled against him at any time. The facts of the present case are thus different and, therefore, the ratio of the judgment in the case of Tata Engineering and Locomotive Company Ltd (supra) will not apply. Similarly, the ratio of the judgments on which the reliance is placed by the learned Senior Counsel Mr. Rele on the question of subsequent events being taken into consideration in the case of Superintendent of Post Offices (supra) and in the case of Mukand Ltd (supra) will also not apply, as discussed hereinabove. In the present case, subsequent events, even if they are not on record, would not alter or change the character of the order of discharge and what is required to be seen is whether the action was taken as a colourable exercise of power or with malafide intention. Therefore, in these circumstances, what happened subsequently is immaterial. In the present case, the Company did not face any further strikes. It is possible that because of the efforts which were taken by the Trade Union and its members the workers were satisfied with the demands met by the Company and, therefore, they did not

have any occasion to go on strike again. Therefore, it cannot be said that merely because subsequent functioning of the Company was smooth, the Company was justified in removing this workman. The ratio of those judgments which are relied upon by the learned Senior Counsel for the Petitioner cannot apply to the facts of the present case and there is much substance in the submissions made by Mr. Pai, the learned Counsel appearing on behalf of Respondent No.1 when he distinguished these judgments with reference to the facts of the present case.

19. The last question which needs to be considered is regarding the payment of back-wages. In the instant case, the Petitioner was removed when he was 54 years of age and after four years he attended the age of superannuation. The facts on record, in my view, clearly indicate that the Company felt that this workman Mr. S.S. Naik was creating lot of problems for the Company and in its own perception he was a sole architect for bringing about strikes which eventually had to be settled by the Company by accepting the demands of the Trade Union. The Company, therefore,

thought it fit to remove the workman unceremoniously, irrespective of further outcome in legal litigation. It would not be out of place to mention here that the Company had stated that it had offered an amount of Rs 89,000/- as wages to the workman. This amount, in fact, was never received by the workman. Even after the amount was deposited in this Court, serious objection was raised by the Company for withdrawal of the amount by the workman. This indicates that the Company had taken a conscious decision to fight a legal battle till very last and not to pay even a single farthing of just and due demand of the workman in respect of provident fund and other dues. Taking these facts into consideration and also taking into consideration that the workman was 54 years of age, it would have been difficult for him to find a suitable other job, in my view, the Tribunal was justified in not going into the issue of whether the workman was gainfully employed or not after he was discharged from service. Apart from that, the Tribunal came to the conclusion that the order of discharge was as a result of victimization and was passed with malafide intention. In such circumstance, the workman would be

entitled to get full back-wages, particularly when the question of reinstatement in the present case would not arise as the workman has already reached the age of superannuation in the year 1999. The ratio of the judgments, therefore, on which the reliance is placed by the learned Senior Counsel Mr. Rele, would not apply to the facts of the present case and there cannot be any strait jacket formula in respect of payment of back-wages as each case has to be decided on the facts and circumstances of the said case. The distinction, therefore, which has been made by Mr. Pai, the learned Counsel appearing on behalf of Respondent No.1 will have to be accepted.

20. In view of what is stated hereinabove, it would not be relevant whether there is any provision in the standing order regarding simpliciter termination of a workman. The learned Counsel appearing on behalf of Respondent No.1 has submitted that there is no provision in the standing order regarding termination or discharge whereas Mr Rele, the learned Senior Counsel for the Petitioner has invited my attention to clause 18 of the standing order which talks

about termination of the workman. In any event, nothing turns on this aspect since the question which really was required to be considered was : whether the order which was passed by the Company was malafide or not and whether it was justified on the material which was on record?

21. In the result, in my view, there is no merit in the submissions made by the learned Senior Counsel appearing on behalf of the Petitioner. Writ Petition, therefore, is dismissed. Rule is discharged. Interim order is vacated. The Respondent No.1 is permitted to withdraw the amount which is deposited by the Company alongwith interest accrued, on furnishing adequate security.

22. At this stage, the learned Counsel appearing on behalf of the Petitioner seeks stay of this judgment. Application for stay is rejected.

(V.M. KANADE, J.)